

ROY COOPER  
*Governor*  
MICHAEL S. REGAN  
*Secretary*  
S. DANIEL SMITH  
*Director*



NORTH CAROLINA  
*Environmental Quality*

February 24, 2021

DWR #2002-0158v3  
Brunswick County

Town of Sunset Beach  
Attn: Lisa J. Anglin  
700 Sunset Blvd. N.  
Sunset Beach, NC 28468

**Subject: APPROVAL OF INDIVIDUAL 401 WATER QUALITY  
CERTIFICATION WITH ADDITIONAL CONDITIONS – MODIFICATION**  
Town of Sunset Beach Navigation Project; Maintenance  
Dredging of South Jinks Creek, the Bay Area and the Feeder  
Channel – Modification

Dear Ms. Anglin:

Attached hereto is a copy of No. WQC004284 issued to Ms. Lisa Anglin and the Town of Sunset Beach, dated February 24, 2021. **This Certification replaces the Certification issued on August 1, 2019.** This approval is for the purpose and design described in your application. The plans and specifications for this project are incorporated by reference as part of this Water Quality Certification. If you change your project, you must notify the Division and you may be required to submit a new application package with the appropriate fee. If the property is sold, the new owner must be given a copy of this Certification and is responsible for complying with all conditions. [15A NCAC 02H .0507(d)(2)].

This Certification does not relieve the permittee of the responsibility to obtain all other required Federal, State, or Local approvals before proceeding with the project, including those required by, but not limited to, Sediment and Erosion Control, Non-Discharge, Water Supply Watershed, and Trout Buffer regulations.

This Water Quality Certification neither grants nor affirms any property right, license, or privilege in any waters, or any right of use in any waters. This Water Quality Certification does not authorize any person to interfere with the riparian rights, littoral rights, or water use rights of any other person and does not create any prescriptive right or any right of priority regarding any usage of water. This Water Quality Certification shall not be interposed as a defense in any action respecting the determination of riparian or littoral rights or other rights to water use. No consumptive user is deemed by virtue of this Water Quality Certification to possess any prescriptive or other right of priority with respect to any other consumptive user regardless of the quantity of the withdrawal or the date on which the withdrawal was initiated or expanded.



North Carolina Department of Environmental Quality | Division of Water Resources  
Wilmington Regional Office | 127 Cardinal Drive Extension | Wilmington, North Carolina 28405  
910.796.7215

Upon the presentation of proper credentials, the Division may inspect the property.

This Water Quality Certification shall expire on the same day as the expiration date of the corresponding Individual Section 404 Permit. The conditions shall remain in effect for the life of the project, regardless of the expiration date of this Water Quality Certification.

Non-compliance with or violation of the conditions herein set forth may result in revocation of this Water Quality Certification for the project and may also result in criminal and/or civil penalties.

If you are unable to comply with any of the conditions of this Water Quality Certification you must notify the Asheville Regional Office within 24 hours (or the next business day if a weekend or holiday) from the time the permittee becomes aware of the circumstances.

The permittee shall report to the Wilmington Regional Office any noncompliance with, and/or any violation of, stream or wetland standards [15A NCAC 02B .0200] including but not limited to sediment impacts to streams or wetlands. Information shall be provided orally within 24 hours (or the next business day if a weekend or holiday) from the time the permittee became aware of the non-compliance circumstances.

This approval and its conditions are final and binding unless contested [G.S. 143-215.5].

This Certification can be contested as provided in Chapter 150B of the North Carolina General Statutes by filing a Petition for a Contested Case Hearing (Petition) with the North Carolina Office of Administrative Hearings (OAH) **within sixty (60) calendar days**. Requirements for filing a Petition are set forth in Chapter 150B of the North Carolina General Statutes and Title 26 of the North Carolina Administrative Code. Additional information regarding requirements for filing a Petition and Petition forms may be accessed at <http://www.ncoah.com/> or by calling the OAH Clerk's Office at (919) 431-3000.

One (1) copy of the Petition must also be served to the North Carolina Department of Environmental Quality:

William F. Lane, General Counsel  
Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1601

This certification completes the review of the Division under section 401 of the Clean Water Act and 15A NCAC 02H .0500. Contact Robb Mairs at 910-796-7215, [Robb.Mairs@ncdenr.gov](mailto:Robb.Mairs@ncdenr.gov) if you have any questions or concerns.

Sincerely,

DocuSigned by:

*Paul Wojoski*

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Paul Wojoski, Supervisor  
401 & Buffer Permitting Branch

cc:

Robert Neal, Moffatt & Nichol (via email)

Greg Currey, USACE Wilmington Regulatory Field Office (via email)

Curt Weychert, NCDCM Morehead City Office (via email)

Tara MacPherson, NCDCM Wilmington Office (via email)

Todd Bowers, EPA, (via email)

DWR 401 & Buffer Permitting Branch file (Laserfiche)

## **NORTH CAROLINA 401 WATER QUALITY CERTIFICATION**

**CERTIFICATION #WQC004284** is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to North Carolina's Regulations in 15 NCAC 02H .0500 and 15A NCAC 028 .0200, to Ms. Lisa Anglin and the Town of Sunset Beach, who have authorization for the impacts listed below, as described within your Coastal Area Management Act (CAMA) application received by the N.C. Division of Water Resources (Division) on October 2, 2020; Public Notice issued by the US Army Corps of Engineers and received by the Division on October 19, 2020, and sequential information received on December 17, 2020 and January 26, 2021.

The State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of the Public Laws 92-500 and PL 95-217 if conducted in accordance with the application, the supporting documentation, and conditions hereinafter set forth.

**This approval requires you to follow the conditions listed in the certification below.**

### **Conditions of Certification [15A NCAC 02H .0506(b)]:**

1. Impacts Approved. The following impacts, as detailed in your December 17, 2020 CAMA Major Application to the NC Division of Coastal Management, are hereby approved provided that all of the other specific and general conditions of this Certification (or Isolated Wetland Permit) are met. No other impacts are approved, including incidental impacts. [15A NCAC 02H .0506 (b) and/or (c)]:

<b>Type of Impact</b>	<b>Amount Approved (Units) Permanent</b>	<b>Plan Location or Reference</b>
Open Water / Shallow Bottom Impacts Dredge	18 (acres) South Jinks Creek	Sheets 1 through 7 Dated September 9, 2020 and Project Narrative
Nearshore Placement (below MHW)	9.2 (acres) Atlantic Ocean	Sheets 1 through 7 Dated September 9, 2020 and Project Narrative

2. Moratoriums

**The Permittee shall comply with any moratoriums per the NC Division of Marine Fisheries and the NC Wildlife Resources Commission.** Dredging moratoriums shall be



observed as required by the NC Division of Marine Fisheries, NC Wildlife Resources, US Fish and Wildlife and National Marine Fisheries. If such activities should take place during periods of high biological activity (e.g. shorebird, or sea turtle nesting), biological monitoring may be required at the request of other state and federal agencies and coordinated with these dredging activities.

*Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)*

*Justification: A project that affects waters shall not be permitted unless the existing uses (including aquatic life propagation and biological integrity), and the water quality to protect such uses, are protected. Protections are necessary to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion. The Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards, or would result in secondary or cumulative impacts.*

### 3. Turbidity Standard

The Permittee shall adhere specially to 15A NCAC 02B .0220 Tidal Salt Water Quality Standards for Class SC Waters.(12) pH: shall be normal for waters in the area, which generally shall range between 6.8 and 8.5 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions; (19) Turbidity: the turbidity in the receiving water shall not exceed 25 NTU; if turbidity exceeds this level due to natural background conditions, the existing turbidity level shall not be increased. [15A NCAC 02B .0220]

The Permittee shall conduct the following dredging effluent monitoring:

Samples shall be collected at daily time intervals of one hour after system start-up, midway of the dredge process (6 hours) and one hour prior to system shutdown assuming a 12 hour day. The sampling shall be done following the longshore current just beyond the nearshore placement at 1000' and 2000' intervals beyond the discharge point. If the turbidity is above 25 NTU at the 2000' point, a third sample should be taken at the point where the turbidity is 25 NTU and that distance noted in the record.

The Permittee shall maintain a record of the daily equipment calibration and sample results at the required sampling intervals.

*Citation: 15A NCAC 02B .0211; 15A NCAC 02H .0506(b)(1); 15A NCAC 02H .0507(c)*

*Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity, wildlife, secondary contact recreation, agriculture) and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.*

4. Please understand that the waters around your project area have been identified by the Division of Marine Fisheries as Primary Nursery Area (PNA). Should the need for dredging within the proposed project area arise in the future, please be aware that new dredging within a PNA is not permitted under 15A NCAC 02B .0221 as it results in degradation of water quality standards and therefore is considered a water quality violation.

*Citation: 15A NCAC 02B .0221; 15A NCAC 02H .0502(a); 15A NCAC 02H .0506(b)(1); 15A NCAC 02H .0507(c)*

*Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule [including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity (including fishing, fish, and Primary Nursery Areas (PNAs)), wildlife, secondary contact recreation, and shellfishing for marketing purposes]; and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.*

5. Eastern Channel Area is classified as SA;HQW by the Division of Water Resources (DWR) and has been determined to be a Primary Nursery Area (PNA) by the Division of Marine Fisheries (DMF). Please understand that the waters around your project area have been identified as a PNA, and should requests for dredging within the proposed project area arise in the future, they will be denied. Please be aware that new dredging within a PNA is not permitted under 15A NCAC 02B .0220. This activity results in degradation of water quality standards and is therefore considered a water quality violation. Any turbidity standard violations of waters going into these creeks are also considered Water Quality Violations.

*Citation: 15A NCAC 02B .0220; 15A NCAC 02H .0502(a); 15A NCAC 02H .0506(b)(1); 15A NCAC 02H .0507(c)*

*Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule [including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity (including fishing, fish, and Primary Nursery Areas (PNAs)), wildlife, and secondary contact recreation]; and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.*

6. The effluent water from the dredge spoil shall not be released into open shellfish waters unless Shellfish Sanitation and the DWR Wilmington (910-796-7215) Regional Office is notified and provide approval prior to the release.

*Citation: 15A NCAC 02B .0221; 15A NCAC 02H .0502(a); 15A NCAC 02H .0506(b)(1); 15A NCAC 02H .0507(c)*

*Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule [including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity (including fishing, fish, and Primary Nursery Areas (PNAs)), wildlife, and secondary contact recreation]; and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. In determining that the proposed activity will comply with state water quality standards (including designated uses, numeric criteria, narrative criteria and the state's antidegradation policy), the Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards or would result in secondary or cumulative impacts.*

7. The permittee shall report to the DWR Wilmington Regional Office any noncompliance with, and/or any violation of, stream or wetland standards [15A NCAC 02B .0200], including but not limited to sediment impacts to streams or wetlands. Information shall be provided orally within 24 hours (or the next business day if a weekend or holiday) from the time the permittee became aware of the non-compliance circumstances.

*Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)*

*Justification: Timely reporting of non-compliance is important in identifying and minimizing detrimental impacts to water quality and avoiding impacts due to water pollution that precludes any best use on a short-term or long-term basis.*

8. No waste, spoil, solids, or fill of any kind shall occur in wetlands or waters beyond the footprint of the approved impacts (including temporary impacts).

*Citation: 15A NCAC 02H .0506; 15A NCAC 02H .0507(c)*

*Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.*

9. When applicable, all construction activities shall be performed and maintained in full compliance with G.S. Chapter 113A Article 4 (Sediment and Pollution Control Act of 1973). Regardless of applicability of the Sediment and Pollution Control Act, all projects shall incorporate appropriate Best Management Practices for the control of sediment and erosion so that no violations of state water quality standards, statutes, or rules occur.

Design, installation, operation, and maintenance of all sediment and erosion control measures shall be equal to or exceed the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*, or for linear transportation projects, the *North Carolina Department of Transportation Sediment and Erosion Control Manual*.

All devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) sites, including contractor-owned or leased borrow pits associated with the project. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.

For borrow pit sites, the erosion and sediment control measures shall be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*. Reclamation measures and implementation shall comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.

*Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC02B .0200; 15A NCAC 02B .0231*

*Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (12) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses; and (21) turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. As cited in Wetland Standards: (c)(1) Liquids, fill or other solids, or dissolved gases shall not be present in amounts that may cause adverse impacts on existing wetland uses; and (3) Materials producing color or odor shall not be present in amounts that may cause adverse impacts on existing wetland uses.*

10. All mechanized equipment operated near surface waters shall be inspected and maintained regularly to prevent contamination of surface waters from fuels, lubricants, hydraulic fluids, or other toxic materials. Construction shall be staged in order to minimize the exposure of equipment to surface waters to the maximum extent practicable. Fueling, lubrication, and general equipment maintenance shall be performed in a manner to prevent, to the maximum extent practicable, contamination of surface waters by fuels and oils.

*Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c); 15A NCAC 02B .0200; 15A NCAC 02B .0231*



*Justification: A project that affects waters shall not be permitted unless the existing uses, and the water quality to protect such uses, are protected. Activities must not cause water pollution that precludes any best use on a short-term or long-term basis. As cited in Stream Standards: (12) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. As cited in Wetland Standards: (c)(1) Liquids, fill or other solids, or dissolved gases shall not be present in amounts that may cause adverse impacts on existing wetland uses; and (3) Materials producing color or odor shall not be present in amounts that may cause adverse impacts on existing wetland uses.*

11. In accordance with 143-215.85(b), the permittee shall report any petroleum spill of 25 gallons or more; any spill regardless of amount that causes a sheen on surface waters; any petroleum spill regardless of amount occurring within 100 feet of surface waters; and any petroleum spill less than 25 gallons that cannot be cleaned up within 24 hours.

*Citation: 15A NCAC 02H .0507(c); N.C.G.S 143-215.85(b)*

*Justification: Person(s) owning or having control over oil or other substances upon notice of discharge must immediately notify the Department, or any of its agents or employees, of the nature, location, and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. This action is required in order to contain or divert the substances to prevent entry into the surface waters. Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.*

12. The permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law.

*Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)*

*Justification: Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule, and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis. The Division must evaluate if the activity has avoided and minimized impacts to waters, would cause or contribute to a violation of standards, or would result in secondary or cumulative impacts.*

13. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this General Certification. A copy of this General Certification shall be available at the project site during the construction and maintenance of this project.

*Citation: 15A NCAC 02H .0506(b); 15A NCAC 02H .0507(c)*

*Justification: Those actually performing the work should be aware of the requirements of this 401 Water Quality General Certification to minimize water quality impacts.*

This approval to proceed with your proposed impacts or to conduct impacts to waters as depicted in your application shall expire upon expiration of the 404 or CAMA Permit. The conditions in effect on the date of issuance shall remain in effect for the life of the project, regardless of the expiration date of this Certification. [15A NCAC 02H .0507(c)]

This, the 24th day of February 2021

DocuSigned by:  
*Paul Wojoski*  
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Paul Wojoski, Supervisor  
401 & Buffer Permitting Branch

PAW/rlm